

Federal Deposit Insurance Corporation

§ 370.6

(j) No mandatory convertible debt may be issued without obtaining the FDIC's prior written approval.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 9525, Mar. 4, 2009; 74 FR 12084, Mar. 23, 2009; 74 FR 45099, Sept. 1, 2009; 74 FR 54749, Oct. 23, 2009; 75 FR 20264, Apr. 19, 2010; 75 FR 36510, June 28, 2010]

§ 370.6 Assessments under the Debt Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the debt guarantee program for the period from October 14, 2008 through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will not pay any assessment under the program.

(b) *Notice to the FDIC.* No guaranteed debt shall be issued by a participating entity under the FDIC's debt guarantee program unless notice of the issuance of such debt and payment of associated assessments is provided to the FDIC as required by this section and, for guaranteed debt issued after November 21, 2008, the participating entity agrees to be bound by the terms of the Master Agreement, as set forth on the FDIC's Web site.

(1) Any eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008, as provided in § 370.5, and that issues any guaranteed debt during the period from October 14, 2008 through December 5, 2008 which is still outstanding on December 5, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site *FDICconnect* on or before December 19, 2008, and the entity's Chief Financial Officer or equivalent shall certify that the issuances identified as FDIC-guaranteed debt outstanding at each point of time did not exceed the debt guarantee limit as set forth in § 370.3

(2) Each participating entity that issues guaranteed debt after December 5, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site *FDICconnect* within the time period specified by the FDIC. The eligible entity's Chief Financial Officer or equivalent shall certify that the issuance of guaranteed debt does not

exceed the debt guarantee limit as set forth in § 370.3.

(3) The FDIC will provide procedures governing notice to the FDIC and certification of guaranteed amount limits for purposes of this section.

(c) *Initiation of assessments.* Assessments, calculated in accordance with paragraph (d) of this section, will accrue, with respect to each eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008:

(1) Beginning on November 13, 2008, on all senior unsecured debt, as defined in § 370.2(e)(1)(i) (except for overnight debt), issued by it on or after October 14, 2008, and on or before December 5, 2008, that is still outstanding on December 5, 2008; and

(2) Beginning on December 6, 2008, on all senior unsecured debt, as defined in paragraphs (e)(1)(ii) or (e)(1)(iii) of § 370.2, issued by it on or after December 6, 2008.

(d) *Amount of assessments for debt within the debt guarantee limit.* (1) *Calculation of assessment.* Subject to paragraphs (d)(3) and (h) of this section, and except as provided in paragraph (i) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

For debt with a maturity or time period to conversion date of—	The annualized assessment rate (in basis points) is—
180 days or less (excluding overnight debt)	50
181–364 days	75
365 days or greater	100

(2) If the debt being issued has a maturity date that occurs after the expiration date of the guarantee, the expiration date of the guarantee instead of the maturity date will be used to calculate the assessment.

(3) The amount of assessment for a participating entity, other than an insured depository institution, that controls, directly or indirectly, or is otherwise affiliated with, at least one insured depository institution will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the rates set forth in the table in paragraph (d)(1) of this section, except that each such rate shall be increased by 10 basis points, if the combined assets of all insured depository institutions affiliated with such entity constitute less than 50 percent of consolidated holding company assets. The comparison of assets for purposes of this paragraph shall be determined as of September 30, 2008, except that in the case of an entity that becomes an eligible entity after October 13, 2008, the comparison of assets shall be determined as of the date that it becomes an eligible entity.

(4) *Assessment Invoicing.* As soon as the participating entity provides notice as required in paragraph (b) of this section, the invoice for the appropriate fee will be automatically generated and posted on *FDICconnect* for the account associated with the participating entity, and the time limits for providing payment in paragraph (g) of this section will apply.

(5) *No assessment reduction for early retirement of guaranteed debt.* A participating entity's assessment shall not be reduced if guaranteed debt is retired prior to its scheduled maturity date or conversion date.

(e) *Increased assessments for debt exceeding the debt guarantee limit.* Any participating entity that issues guaranteed debt represented as being guaranteed by the FDIC exceeding its debt guarantee limit as set forth in § 370.3(b) shall have its applicable assessment rate(s) for all outstanding guaranteed debt increased by 100 percent for purposes of the calculations in paragraph (d)(1) of this section. The FDIC may reduce the assessments under this paragraph upon a showing of good cause by the entity. In addition, any entity

making such a misrepresentation may also be subject to enforcement action under 12 U.S.C. 1818, as further described in § 370.11.

(f) *Long term non-guaranteed debt fee.* Each participating entity that elects to issue long term non-guaranteed debt pursuant to § 370.3(g) must pay the FDIC a nonrefundable fee equal to 37.5 basis points times the amount of the entity's senior unsecured debt, as defined in § 370.2(e)(1)(i), that had a maturity date on or before June 30, 2009, and was outstanding as of September 30, 2008. If the entity had no such debt outstanding as of September 30, 2008, the fee will equal 37.5 basis points times the amount of the entity's debt guarantee limit established under § 370.3(b).

(1) The nonrefundable fee will be collected in six equal monthly installments.

(2) An entity electing the nonrefundable fee option will also be billed as it issues guaranteed debt under the debt guarantee program, and the amounts paid as a nonrefundable fee under this paragraph will be applied to offset these bills until the nonrefundable fee is exhausted.

(3) Thereafter, the institution will have to pay additional assessments on guaranteed debt as it issues the debt, as otherwise required by this section.

(g) *Collection of assessments—ACH Debit.* (1) Each participating entity shall take all actions necessary to allow the Corporation to debit assessments from the participating entity's designated deposit account as provided for in § 327.3(a)(2). The assessment payments of a participating entity that is not an insured depository institution shall be debited from the designated account of the affiliated insured depository institution it selected for *FDICconnect* access under § 370.5(g).

(2) Each participating entity shall ensure that funds in an amount at least equal to the amount of the assessment are available in the designated account for direct debit by the Corporation on the first business day after posting of the invoice on *FDICconnect*. A participating entity that is not an insured depository institution shall provide the necessary funds for payment of its assessments.

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(3) Failure to take all necessary action or to provide funding to allow the Corporation to debit assessments shall be deemed to constitute nonpayment of the assessment, and such failure by any participating entity will be subject to the penalties for failure to timely pay assessments as provided for at § 308.132(c)(3)(v).

(4) For purposes of this paragraph (g) of this section, assessments shall include all applicable surcharges imposed pursuant to paragraph (h) of this section.

(h) *Surcharges on assessments.* (1) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, that is issued on or after April 1, 2009 and on or before June 30, 2009, and that matures or converts on or before June 30, 2012, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by:

(i) 10 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 20 basis points for such debt that is issued by any other participating entity.

(2) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, and that is either issued on or after April 1, 2009 with a maturity or conversion date after June 30, 2012, or issued after June 30, 2009, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by

(i) 25 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 50 basis points for such debt that is issued by any other participating entity.

(i) *Assessment for debt issued under the Emergency Guarantee Facility.* The amount of the assessment for FDIC-guaranteed debt issued pursuant to § 370.3(k) of this part is equal to the amount of the debt times the term of the debt (or in the case of mandatory convertible debt, the time period to conversion) times an annualized assessment rate of 300 basis points, or such

greater rate as the FDIC may determine in its decision approving such issuance.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 9525, Mar. 4, 2009; 74 FR 12085, Mar. 23, 2009; 74 FR 54749, Oct. 23, 2009]

§ 370.7 Assessment for the Transaction Account Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the transaction account guarantee program for the period from October 14, 2008, through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will not pay any assessment under the program.

(b) *Initiation of assessments.* Beginning on November 13, 2008 each eligible entity that does not opt out of the transaction account guarantee program on or before December 5, 2008 will be required to pay the FDIC assessments on all deposit amounts in noninterest-bearing transaction accounts calculated in accordance with paragraph (c) of this section.

(c) *Amount of assessment.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of \$250,000, as reported on its quarterly Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (each, a "Call Report") in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest-bearing transaction account into a noninterest-bearing savings deposit account as provided in § 370.4(c).

(2) For the period after December 31, 2009 through and including June 30, 2010, each participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly a fee based upon its Risk Category rating. The amount of the fee for each such entity is equal to the